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SUMMARY RECORD OF THE 33rd MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 23 February 1993, at 10 a.m.

Chairman: Mr. ENNACEUR (Tunisia)

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The meeting was called to order at 10.30 a.m.

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

(a) TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(b) STATUS OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(c) QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES

(d) QUESTION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(agenda item 10) (continued) (E/CN.4/1993/4, 20, 21*, 22, 23 and Add.1 and 2, 24, 25 and Add.1, 26-28 and 86; E/CN.4/1993/NGO/7, 9, 10, 18-20 and 22; E/CN.4/1992/17 and Add.1, 18 and Add.1 and 20; E/CN.4/Sub.2/1992/9 and Add.1, 17, 19, 22, 23/Rev.1, 24 and Add.1-3; A/47/662; A/RES/47/109)

1. Mr. MORLAND (United Kingdom), speaking first on the question of torture, expressed the admiration of his delegation and Government for the work of the Special Rapporteur on torture, Mr. Kooijmans, for whom it would be difficult to find a successor. As made clear by Mr. Kooijmans in his report (E/CN.4/1993/26), "torture is the very denial by the torturer of his victim's inherent dignity". The list of countries where allegations of torture had been made was very long, and that testified to the very real problem, which existed in almost every country, of restraining security forces, faced with increasing waves of crime and terrorism, from straying outside the law. But there were big differences in the responses to allegations. Some countries, even those with enormous problems of internal security, reacted effectively, bringing national procedures to bear and punishing those responsible: they regarded the Special Rapporteur's work as helpful. Other countries did not respond at all, and it was often those countries that had made no real attempt to introduce in their legislation or practice minimum standards to prevent torture. In such countries, prisoners had no access to a lawyer, a doctor or even to their relatives to ensure that justice was done. In other countries, the regime was so oppressive that complaints were never made, and it was worth making the point in that regard that there was no easy way of telling from the report whether in a particular country the number of cases reported represented a large proportion of the whole or was merely the tip of the iceberg.

2. The Special Rapporteur had highlighted well the links between his own mandate and the two main treaties that covered torture: the Convention against Torture itself and the International Covenant on Civil and Political Rights. Mr. Kooijmans mentioned in paragraphs 584 to 594 the measures recommended by the Human Rights Committee, measures which he himself had consistently stressed. He rightly underscored the responsibility of Governments and of the judiciary in preventing torture and, drawing attention to the impunity enjoyed by torturers, said that Governments could not go on condemning torture on the international level while condoning it on the national level.

3. In that context, an optional protocol to the Convention against Torture, if adopted, would be most useful, because it would permit prison visits by independent experts. The Working Group on the Draft Optional Protocol, the representatives of the International Committee of the Red Cross (ICRC), the European Committee for the Prevention of Torture and the Special Rapporteur on Torture himself were to be congratulated on having described their practical experiences in conducting visits to places of detention.

4. Turning to the question of enforced and involuntary disappearances, he noted a number of encouraging developments. Thus, the Working Group on Enforced or Involuntary Disappearances had found (see E/CN.4/1993/25 and Add.1) that there were still 10 countries which had never provided replies on specific cases, but that the cooperation extended to the Working Group by the majority of Governments was improving. The dramatic increase in the number of cases submitted to the Working Group revealed a greater awareness throughout the world of the Working Group and its mandate and an increased confidence, on the part of those concerned, in the action of human rights mechanisms.

5. Several trends emerged from the report. In countries that the Working Group had been investigating for some time, the situation had often improved with the easing of social and political tension. A case in point was Sri Lanka, where, although the situation still gave cause for concern, human rights violations had greatly diminished compared with the previous year and, above all, the authorities had cooperated with the Working Group in taking steps to deal with the phenomenon of disappearances. His delegation urged the Sri Lankan authorities to implement the Working Group's recommendations to the fullest extent.

6. In other countries, disappearances were encouraged by the excessive length of time that suspects could be held in police custody without supervision of a court or by the blank refusal of the authorities to help a family locate someone who had vanished.

7. Concerning impunity, annex I to the report (E/CN.4/1993/25) contained evidence from several NGOs that it was the predominance of the military over the civilian authorities which facilitated disappearances and other serious human rights violations. In that context, he paid a tribute to the work of the NGOs and stressed the vital role that they played, there and elsewhere, in promoting and protecting human rights and fundamental freedoms.

8. Annex II reproduced the text of the Declaration on the Protection of All Persons from Enforced Disappearance adopted by the General Assembly in December 1992. It should make it more difficult for any Government to take the line that the efforts of the Commission on Human Rights to put an end to that phenomenon, or to combat torture constituted an attempt to force a people to accept alien values.

9. In conclusion, one must not forget, when considering agenda item 12, to look at the evidence provided by the two above-mentioned reports, because they showed which Governments had cooperated with the Working Group and the Special Rapporteur and which had not.

10. Mr. WEISSBRODT (United States of America) said that the Commission could make a real difference when it spoke to the world during the examination of agenda item 12, about gross violations in specific countries or by providing advisory services to countries that requested them (agenda item 21). In addition, it could make a significant contribution through institutional mechanisms for taking effective action on various aspects of human rights violations. Thus, the working groups and special rapporteurs had helped to find persons who had disappeared, prevent arbitrary executions, stop torture, resolve problems of religious intolerance, investigate the use of mercenaries and protect children. In order to be more effective, the Commission and Governments should devote greater attention to the findings and recommendations in the reports of the working groups and special rapporteurs.

11. In that context, he recalled that in 1991 the Working Group on Arbitrary Detention had been established to adjudicate in cases in which detention had been imposed arbitrarily or in any other manner inconsistent with international human rights standards, including administrative detention and detention subsequent to conviction. Complaints could be received from Governments, intergovernmental organizations, non-governmental organizations and individuals. In the past year, the Working Group had rendered its first decisions, thereby bringing the role of thematic procedures one important step further. It had quite properly decided that it would keep confidential the sources of the communications it received if the sources so desired, and it had then asked Governments, intergovernmental organizations and other sources upon which it was dependent for its information to bring a greater diversity of cases of improper detention to its attention. In its early years, however, it was important for the Working Group to show its impartiality by adjudicating cases from various parts of the world. Accordingly, it might consider changes in its procedures to permit it to examine important cases without waiting for formal submissions of information about such cases. The Commission might envisage revising its procedures along those lines at its 1994 session.

12. Commending the Working Group on Arbitrary Detention for its excellent start, he said that there was a gap in the thematic procedures of the Commission. For several years, the Commission had been calling upon countries to stop repressing freedom of expression as guaranteed by the International Bill of Human Rights. The time had come for the Commission to take concrete steps towards protecting the rights of journalists, writers, scholars, political advocates and, indeed, everyone to express their beliefs. The Commission, which could be proud of its work in developing the thematic procedures, the usefulness of which had been clearly demonstrated, should give thought to appointing special rapporteurs on racism and on freedom of expression.

13. Mr. DAVIDSE (Netherlands) said that he would focus his remarks on the issue of combating impunity. It was a complex issue which involved a combination of rights and duties, including the State's duty to prosecute those who committed human rights violations. The international human rights instruments, such as the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights, as well as action taken by the United Nations, had already opened the way. The Convention against Torture contained provisions regarding the prosecution of offenders and the right of

victims to have their case examined promptly and impartially by the competent authorities. Equally, the Human Rights Committee had recognized the obligation of States to adopt measures to avoid the repetition of human rights violations and to punish those responsible. Furthermore, States must inform families about the situation of a "disappeared" person and compensate such families.

14. The Commission's rapporteurs and working groups had often pointed to the importance of combating impunity and the danger entailed in not prosecuting and punishing such offences. Thus, the principle was well established, and yet impunity was still very widespread, particularly in situations in which the rule of law and democracy did not take precedence, where internal conflict added to the problem and where in a transition to more democratic ways it proved hard to come to terms with the past. The predicament of those countries in transition, where progress was slowed by a desire to conciliate and by the difficulty of designating those responsible, should not be underestimated. However, it was important not to shy away from those problems, but to be guided instead by the ideals of democracy and the rule of law, to fight against impunity while avoiding ruthless purges, to establish the facts and thus to work towards preventing human rights violations, as several countries in transition were doing by addressing their past fearlessly.

15. In 1992, the United Nations had already made great efforts to combat impunity: the Commission on Human Rights, the Sub-Commission and the General Assembly had adopted resolutions concerning a number of countries, particularly the former Yugoslavia, in which they had underscored the responsibility of individuals; the Working Group on Enforced or Involuntary Disappearances had drawn the question to the attention of Governments, and replies were included in the latest report (E/CN.4/1993/25 and Add.1); in December 1992, the General Assembly had adopted the Declaration on Disappearances, which expressly addressed the question of impunity; and the Sub-Commission had asked Mr. Guissé and Mr. Joinet to continue considering the issue. The latter had reported on their work in document E/CN.4/Sub.2/1992/18, proposing specific measures to combat impunity and mapping out future action.

16. Elsewhere, the Conference on the Right to Restitution, Compensation, and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms, held in Maastricht (Netherlands) in 1992, had stressed the close relationship between impunity and the right to compensation.

17. Another important event had been an international meeting concerning impunity, held in November in Geneva by the International Commission of Jurists and the Swiss National Commission on Human Rights. The participants had concluded that national action did not suffice and that measures must be taken at international level to make sure that those responsible for gross human rights violations were punished. The Under-Secretary-General for Human Rights had echoed that sentiment in his opening statement to the current session of the Commission when he had expressed the hope that the General Assembly would establish an international criminal court in 1993.

The international community must encourage Governments that were unwilling to initiate action at national level to do so by making their obligations clear to them and by drawing cases of impunity to their attention.

18. Lastly, he turned specifically to the former Yugoslavia, where numerous atrocities had been committed against detainees. Whereas in general, States themselves should address the issue of impunity, in that particular context of armed conflict and such gross violations of international humanitarian law, the international community could not remain idle. Along with the other member States of the European community, the Netherlands had repeatedly stressed that the perpetrators of crimes under international humanitarian law committed in the former Yugoslavia should be brought to justice. His Government therefore welcomed the efforts under way pursuant to Security Council resolution 780 (1992) to gather information which would make prosecution possible before an ad hoc United Nations tribunal. It was to be hoped that the Security Council would decide to establish such a body.

19. Mr. ZAHARIA (Romania) said that having accepted its generous principles, the Governments of States that had acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment must proceed to implement them, because, as pointed out in December 1992 by the Special Rapporteur on Torture, whereas progress had been made at international level, at national level only failures had been registered. To bridge the gap between international success and national failure, States must first bring their legislation into line with the Convention and make torture a punishable offence, particularly when perpetrated by police officers on members of the armed forces. The Commission might formulate specific recommendations along those lines, especially as the Convention did not specify offences or applicable penalties. For its part, Romania had faithfully included in its legislation the terms employed in the Convention to define torture, and had provided for appropriate penalties for offences. It therefore had an instrument to combat that scourge.

20. Concerning the administration of justice, his delegation subscribed to the view that military courts should try only cases concerning military personnel and not, as in the past, offences committed by civilians against the State or against peace and humanity.

21. He focused on the draft optional protocol to the Convention, because it constituted an international instrument directed specially towards prevention. The protocol would establish the obligation of States to allow periodic visits to any location where a person was deprived of liberty; it would mark the end of an age in which political detainees were deprived of all contact with their families and in which families did not know what had become of their imprisoned relations, often not learning of their death until later and not even knowing where they were buried. His delegation considered that the Commission should support the draft.

22. Citing a character of Anatole France, Father Jérome Coignard, for whom the history of humanity could be summed up in the following words: "Men were born, suffered and died", he regretted that that description, which for

Anatole France's hero had referred to a distant past, was still so topical in many parts of the world. The essential goal of the Commission was to do everything in its power so that human beings the world over would suffer less.

23. Mr. PEREZ NOVOA (Cuba) said that at a time in which interventionist designs were being concealed behind so-called "humanitarian concerns", it was extremely important for all member States to be able to keep a watch on the activities of the Working Group on Arbitrary Detention and the other special bodies established by the Commission. Cuba had contributed actively to the creation of that body in 1991, and in January 1992 his delegation had drawn the Commission's attention to certain anomalies in the Working Group's methods and to the dangers that that entailed for its credibility and effectiveness.

24. Concerning the report submitted in the current year by the Working Group (E/CN.4/1993/24), his delegation said that in actual fact, the Working Group had unilaterally decided to exceed its mandate. It was no accident that that body was called the "Working Group on Arbitrary Detention" and not on "Arbitrary Detention or Imprisonment". Certain basic United Nations documents on this subject made a clear distinction between the expressions "detention" and "imprisonment", depending on whether the person had already been tried (the second case) or not (the first case). In its decision No. 44/1992, the Working Group acknowledged the existence of that distinction (para. 6 (l)) and also said that it remained to be determined whether the Working Group's mandate also included those cases of deprivation of freedom which were the result of an enforceable judgement (para. 6 (k)). However, notwithstanding those statements, it later reached the completely illogical conclusion that the situation to which the above-mentioned decision referred constituted an act of "arbitrary detention", even though it was an enforceable judgement pronounced by the competent court.

25. That type of decision posed very grave problems of international law. It was inadmissible for the sovereignty of States that a body of the United Nations could question sentences imposed in the administration of justice in a Member State. His delegation therefore urged the Working Group to return to its true mandate as conferred upon it in 1991 by the Economic and Social Council.

26. It was equally unacceptable that the Working Group should have the intention of considering certain articles of the International Covenant on Civil and Political Rights to be binding, even for States that were not parties to that instrument. That would be a flagrant violation of the Vienna Convention on the Law of Treaties, according to which the provisions of a treaty only bound States parties through the mechanisms created by virtue of those instruments.

27. Furthermore, the Working Group did not define in any way the reasons that might render a communication inadmissible. That appeared to confirm that, as far as it was concerned, all communications were admissible.

28. His delegation reserved the right, during the course of activities of the Working Group, to voice other criticism regarding certain conclusions and recommendations of that body, the need to provide a minimum of information about the sources of information of the Working Group and the need for the

Working Group to take into account the provisions of article 29 (2) of the Universal Declaration of Human Rights, as well as other aspects of the revised methods of work, cited in annex IV to the report.

29. In closing, his delegation hoped that the assessments and opinions of the Working Group would not be motivated by political considerations and would remain consistent with the principles of non-discrimination and non-selectivity.

30. Mr. MACRIS (Cyprus) regretted that despite the prohibition of torture by various human rights instruments and the setting up of mechanisms to monitor implementation of those instruments, torture was still so frequent and commonplace. It would appear that torture had become an everyday and systematic practice in a number of States. It was also alarming that in many countries the judicial system was incapable of offering citizens a protection deserving of that name, that all too often judges hid behind a so-called "impartiality" so as not to take a stand and that professional organizations and associations tolerated the involvement of certain of their members in acts of torture.

31. For his Government, it was unacceptable that individuals under the umbrella of the United Nations, in the service of such noble goals as peace and security, should become the victims of human rights violations. Cyprus therefore supported the recommendations contained in the final report on the protection of the human rights of United Nations staff members, experts and their families (E/CN.4/Sub.2/1992/19) and in the updated report by the Secretary-General (E/CN.4/1993/22) on the situation of United Nations staff members, experts and their families who were detained, imprisoned, reported missing or held in a country against their will.

32. Concerning the visit to Sri Lanka by three members of the Working Group on Enforced or Involuntary Disappearances, his Government welcomed the spirit of cooperation shown by the Government of Sri Lanka in hosting the delegation of the Working Group, even when the information provided had been likely to embarrass the Government itself.

33. Turning to the question of missing persons in Cyprus, his delegation had always considered the issue to be purely humanitarian and in no way connected with an overall solution of the Cyprus problem. Yet the matter had remained unresolved for more than 19 years. Most of the 1,619 Greek Cypriots still missing had been arrested by the Turkish Army and were known to be alive, detained either in the occupied zone or in Turkey itself. In flagrant violation of the Geneva Conventions, Turkey refused to provide any information about the fate of the missing persons, insisting that they must all be considered dead. A Committee on Missing Persons in Cyprus had been established in 1981 within the framework of the United Nations; unfortunately, its efforts had not borne fruit, to a large degree because of its restrictive terms of reference and because of the attitude of the Turkish authorities, who had not been willing to furnish the Committee with any evidence on the fate of the missing persons. Consequently, his delegation was of the view that ways and means must be found to strengthen the Committee by accepting the need for an investigation not only in the areas controlled by the Turkish Army in Cyprus, but also in Turkey, where a great number of prisoners were detained,

by securing freedom of movement for the members of the Committee throughout Cyprus as well as in Turkey and, in cases where the persons concerned were really dead, by allowing investigations to locate the place of burial, to perform forensic examinations and to return the remains to Cyprus.

34. Ms. PARK (Canada) said that her remarks would focus primarily upon the right to freedom of opinion and expression and, in that context, on a number of points raised by the Special Rapporteurs, Mr. Joinet and Mr. Türk.

35. The Special Rapporteurs had underscored the centrality of the right to freedom of opinion and expression in the development of any society, a development that was only possible when individuals were able to influence official decisions by participating fully in the political process.

36. The Special Rapporteurs had noted that freedom of opinion was absolute, while freedom of expression, though subject to certain limitations, must not be restricted to the point of impairing the principle itself. Her delegation endorsed their conclusion that those who proposed limitations on freedom of expression must prove their necessity and legality. Furthermore, any sanctions stemming from infringements of valid limitations on freedom of expression must themselves be compatible with all other civil and political rights guaranteed by international instruments. That was an important point, because experience showed that violations of the right to freedom of expression and opinion were often accompanied by other human rights violations, such as arbitrary detention, torture, enforced disappearances and arbitrary executions.

37. It was crucial that the right to freedom of expression and opinion should be held in utmost respect by the Commission and its members. Canada therefore viewed most seriously the recently reiterated declarations by the Iranian authorities of a death sentence on the author Salman Rushdie. That concern was unrelated to the highest respect in which the Canadian Government and people held the religion of Islam and its teachings, and regardless of the contents of his work; however, Salman Rushdie had become a symbol of the universal right to freedom of expression. Her delegation urged Iran to rescind its declaration, demonstrating its commitment to the basic principles for which the Commission stood.

38. Human rights in any society could only be protected if individuals and Governments were willing to ensure their respect. That could only be the case if diversity of opinion was not only tolerated but encouraged. For that reason the Commission was bound to promote international protection for the right to freedom of opinion and expression. Canada had begun discussions with other delegations with a view to proposing a resolution to that effect.

39. Mr. MARAPANA (Sri Lanka) said that a spirit of cooperation had always prevailed between the Working Group on Enforced or Involuntary Disappearances and his Government. That cooperation had been expanded further when his Government, desirous of dealing with the problem of enforced disappearances, had invited the Working Group to visit Sri Lanka in 1991. Subsequent to its visit, the Working Group had made 14 recommendations to the Government of Sri Lanka. Most of them had been accepted by the Government which had already

taken initiatives to address those issues. In October 1992, seven months later, the Working Group had again visited the country to evaluate to what extent its recommendations had been implemented.

40. Regarding the substantive issues raised in the report, significant progress had been made in three areas since the last visit of the Working Group: revision of the security legislation; accountability of those found guilty of having committed human rights violations or of having been responsible for disappearances; and the search for a negotiated political solution to the situation in the north and the east of the country.

41. With regard to the security legislation, of the 15 amended regulations, three were of particular importance.

42. In the future, all arrests made in the framework of cordon and search operations must be reported in writing to the next of kin and to the military or police authorities. Persons in charge of places of detention were required to submit lists of detainees to the local magistrates, who were required to inspect those centres. Finally, the period of a detention order was restricted to three months, after which the case must be reviewed. Those amendments were only a first step towards revising the emergency regulations. The process was continuing, in the light of studies conducted in the University of Colombo, to ensure that the security forces were not above the law and to prevent any misuse of the regulations for the purpose of impunity.

43. The authorities were also endeavouring to make sure that security personnel accounted for their actions every day. The Working Group on Enforced or Involuntary Disappearances had itself stated in its report that several police officers and members of the armed forces had been charged in cases of murder and disappearances; further investigations were being conducted.

44. Lastly, it was clear that if a political solution could be found to the problems in the north and east of the country, it would eliminate the root causes of the human rights violations in those areas, given the causal link between those two issues. In December 1992, the Parliamentary Commission in charge of finding a just and durable solution to the conflict had reached a consensus on the future relationship of the northern and eastern provinces and on the larger issue of devolution. Subject to an agreement between the Government and the opposition, the response of the Tamil political parties and of the LTTE must be obtained; but the authorities were optimistic.

45. His preceding remarks had referred to certain areas highlighted in the report of the Working Group, and particularly to measures taken since its visit to Sri Lanka in October 1992. He also wished to summarize the other measures taken by the authorities to address allegations of disappearances and of human rights violations in general. The number of persons in custody under the emergency regulations was gradually being reduced, and the simplified procedure adopted by the Supreme Court, which allowed detainees to invoke the remedies under the Constitution, had resulted in the examination of 2,300 cases in 1992. The habeas corpus procedure could be invoked in the provincial courts and no longer only in the capital. Furthermore, the Supreme Court ensured that bureaucratic inaction did not make detention unnecessarily long,

and on a number of occasions it had formulated observations and had even ordered compensation in cases where arrest or detention procedures had contained technical defects. Those measures were meant to compel the relevant authorities to act within the law and to keep an accurate track of persons from the time of their arrest.

46. But as the Working Group pointed out in its report, legal safeguards were of limited utility if they were not known to the public. The authorities were therefore working to disseminate the security legislation more widely in order to heighten the awareness of individuals for their rights and to check any abuse by the authorities; they were strengthening existing administrative and judicial checks, reasserting the rule of law and seeking to disabuse those who felt that they could act with impunity. Isolated acts of indiscipline or retaliation were not part of a deliberate policy and should not be seen as an encouragement to flout the rule of law. Sri Lanka would continue, in its own interest and on its own accord, to prosecute and punish those responsible for such activities.

47. Although the conclusions of the Working Group had been reached with the best of intentions, some assertions relating to the pace of negotiations and the level of violence did not really take into account the fact that the democratic negotiations were continuing despite difficulties or the complexity of the situation in the country. The Working Group itself acknowledged that the number of disappearances had already declined at the time of its first visit, as a result of the Government's policy to improve the overall human rights situation. Furthermore, most of the 62 cases reported in 1992 had concerned the north and the east. The current situation in all parts of the south was virtually normal, democratic institutions were functioning and there were hardly any more cases of disappearances in those areas.

48. Although the pace of the political negotiations might not be to the satisfaction of the impatient observer, a significant breakthrough had been achieved in arriving at a political framework for the devolution of power to the regions of the north and the east. That arduous process could not and should not be concluded hastily, and the Government remained committed to the democratic political process, because it was convinced that no lasting solution could be found by military means.

49. The phenomenon of disappearances had not arisen from any deliberate government policy or through official inaction. It was the by-product of an extraordinary situation created by terrorism. The implementation of the recommendations of the Working Group would undoubtedly assist the Government of Sri Lanka in addressing structural and operational deficiencies, but it was also necessary to take into account the exigencies of the prevailing political and security situation. Given its transparency and its will to overcome obstacles to ultimate success, Sri Lanka would continue to cooperate with the United Nations, and in particular within the framework of the activities of the Working Group on Enforced or Involuntary Disappearances.

50. Mr. DARANOWSKI (Poland) was encouraged that 88 States had already ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. But the Commission should strive to persuade all countries to ratify that instrument.

51. His delegation continued to be convinced that the international human rights machinery in the area of torture must focus on prevention. All too often, legal remedies, even if carefully elaborated, proved to be inadequate, particularly from the point of view of the victims. Often, there simply could be no compensation for human rights violations; torture was such a case. His delegation therefore welcomed the establishment of the Working Group on the Draft Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, whose work at its first session had been introduced by its Chairman-Rapporteur, Mrs. Odio Benito (document E/CN.4/1993/28). Even though there had obviously been differences of opinion within the Working Group about the modalities of such a protocol, no major objection had been raised on its principle. Many participants had stressed the principles of cooperation with the State concerned, independence and impartiality; the principle of confidentiality must also be properly defined. Confidentiality of procedures could not be unlimited, and if the State concerned refused to cooperate within the framework of the Convention and the future protocol, there was no longer any reason for confidentiality. It was therefore to be hoped that substantial progress on the elaboration of the text could be achieved within a reasonable period of time, as the Working Group envisaged, bearing in mind the regional instruments already adopted in Europe and under preparation in the Americas.

52. His delegation wished to pay a tribute to the Special Rapporteur on questions of torture, Mr. Kooijmans, whose knowledge, experience and deep commitment to the cause had greatly contributed to the struggle against that odious practice. His delegation wished Mr. Kooijmans every success in his new post.

53. Earlier in the year, the Working Group on Enforced or Involuntary Disappearances had presented a very valuable report (E/CN.4/1993/25) showing that disappearances continued to pose serious problems. The Declaration on the Protection of All Persons from Enforced Disappearance, adopted by the General Assembly of the United Nations on 18 December 1992, described that phenomenon as an offence to human dignity, contrary to the Charter of the United Nations and a violation of human rights. His delegation hoped that the Declaration would serve as a useful guideline for the activities carried out in that area by the Commission, the Working Group, Governments and the international community as a whole. To that end, it was indispensable for the Commission to conduct a regular review of the implementation of that instrument.

54. The Commission should also encourage all Governments to cooperate with the Working Group. Lastly, his delegation subscribed to the observations of the Working Group on the question of impunity. There could be no effective prevention of human rights violations as long as responsible persons in power could count upon amnesty laws and acts of pardon or could hope to plead successfully that they had been obeying orders. The accused must be brought to trial in full conformity with due process of law.

55. In closing, his delegation was pleased that the day before, the Security Council had approved in resolution 808 (1993) the principle of the establishment of an international tribunal to judge those responsible for war crimes in the former Yugoslavia.

56. Mr. VIGNY (Observer for Switzerland) said that his delegation had particularly appreciated, in the latest report of the Working Group on Enforced and Involuntary Disappearances (E/CN.4/1993/25), the statistics on the cases concerning the various countries. It noted with concern that the number of cases treated by the Working Group had almost doubled compared to the previous year, some 10,000 new cases having been reported in 1992 for 36 countries, mainly in Latin America and Asia. It was especially regrettable that many cases had not yet been clarified; the Governments concerned must therefore step up their efforts.

57. His delegation fully shared the conclusions of the Working Group about the underlying causes of forced disappearances: social and political tensions, an inefficient and insufficiently independent administration of justice and the presence of paramilitary and police forces acting with impunity. The responsibility for putting an end to that evil by creating the necessary political, social and, above all, legal conditions clearly lay with the Governments concerned. The Declaration on the Protection of All Persons from Enforced Disappearance, adopted by the General Assembly at its forty-seventh session, ought to play a very useful role in that regard. Switzerland therefore supported the proposals of the Working Group to integrate the Declaration in its methods of work and to devote a separate chapter to obstacles encountered in the implementation of that instrument. But as the Working Group lacked resources, the Commission must urgently request the Secretary-General of the United Nations to ensure that it received all necessary assistance in the exercise of its mandate.

58. The second report of the Working Group on Arbitrary Detention (E/CN.4/1993/24), chaired by Mr. Joinet, was remarkable both in its form and in its content. In its form, the report went beyond the usual framework by presenting general considerations, termed "deliberations", and decisions on concrete cases. In that regard, the deliberations adopted by the Working Group would appear to be particularly pertinent: the improper use of states of emergency, imprecise national criminal legislation and the existence of special courts or emergency courts were all too often at the source of cases of arbitrary detention. In many cases, deprivation of liberty, to which house arrest could be compared, as the Working Group pointed out in deliberation 01, was a form of repression directed against political opponents. In that context, Switzerland shared the concerns of the Working Group and of Mr. Oscar Arias Sanchez, Nobel Peace Prize laureate, about Aung San Suu Kyi, who was detained in Myanmar, and urgently appealed to the Burmese Government to release her.

59. Concerning torture, it was most unfortunate that the Special Rapporteur on that question, Mr. Kooijmans, had ended his mandate by concluding in his latest report (E/CN.4/1993/26) that the situation had not improved. That was certainly not due to the lack of devotion and competence of the Special Rapporteur, who from 1985 to 1993 had performed excellent work, but rather was the fault of Governments that continued to violate that fundamental right. It was regrettable that the Special Rapporteur had been receiving a steadily increasing number of reports of cases of torture or inhuman or degrading treatment throughout the world, even in countries that were among the oldest democracies. In many cases, practices that sometimes went as far as torture were the work of a small number of individuals in the police, the army or

other institutions in charge of national security or criminal investigation; who acted in abuse of their power and in the absence of truly effective legislation or a fully independent judicial system. Such situations could be greatly improved by creating more efficient and independent judicial systems and by ensuring a better training of the personnel of national security services.

60. Much more serious, however, were the numerous reports on countries in which torture was still widespread or, even worse, systematic. The Special Rapporteur cited a dozen countries in every region of the world that fell within that double category. The critical situation of the victims of that phenomenon had an adverse impact on Switzerland's bilateral relations with the authorities of the States concerned.

61. As pointed out by the Special Rapporteur himself, to combat torture it was important first of all to seek to prevent it through periodic visits in places of detention. The Working Group on the Draft Optional Protocol to the Convention against Torture had concluded at the end of its first session (see E/CN.4/1993/28), which his delegation had attended, that useful progress had been made and that the work should continue. It had recognized the importance of regular visits to places where persons were deprived of their liberty and had stressed the need for a preventive mechanism based on the principles of cooperation with States parties to the Convention, confidentiality, independence, impartiality, universality and effectiveness. The purpose of the mechanism would be preventive, involving an evaluation of conditions in places of detention and the formulation of recommendations.

62. There had been recognition of the importance of such visits in providing the foundation for a continuation of efforts to develop an effective mechanism acceptable on the widest possible basis. Switzerland fully subscribed to that point of view and hoped that the Commission would renew the Working Group's mandate so that it could pursue its work and proceed with a first reading of the draft in 1993. A draft resolution along those lines would be submitted to the Commission shortly.

63. Mrs. SABHARWAL (India) said that notwithstanding the existence of international standards, the phenomena of torture and enforced disappearances persisted in various parts of the world. Her delegation, which would like to see acceptable norms applied not only to detainees but to all persons whose human rights had been violated, had carefully studied the reports of the Special Rapporteur on Torture (E/CN.4/1993/26) and the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1993/25).

64. Concerning the phenomenon of disappearances, the Working Group had observed that impunity was probably the most important contributing factor. The international community must work to establish effective corrective mechanisms and safeguards, like those in place in India, where cases of abuse were promptly addressed by the authorities. The democratically elected Government of India was committed to ensuring respect for the fundamental rights of all citizens, including their right to life, which was enshrined in article 21 of the Constitution. Under a constitutional amendment adopted in 1979, that right could not be suspended even when a state of emergency was

declared. The Constitution guaranteed equality before the law, protection of the life and liberty of the individual and protection against illegal or arbitrary arrest.

65. Consistent with those provisions, the central Government and the governments of the States had enacted a number of laws to protect basic human rights, in particular through the Criminal Code, the Code of Criminal Procedure and the Evidence Act. The criminal justice system provided safeguards to prevent the arbitrary treatment of accused persons awaiting trial. A court inquiry in addition to an inquiry by the police was mandatory for cases of death in custody. Specific legislation had also been adopted to protect underprivileged persons from abuse by agents of the State or any other authorities and to prevent the exploitation of women. In that connection, the allegations contained in the report of the Working Group with regard to the purported systematic practice of rape by the police (see E/CN.4/1993/26, para. 257) were totally unfounded. The Criminal Code specifically defined the offence of rape in custody, and in such cases, the accused was presumed guilty and risked imprisonment for life.

66. India's deep commitment to democracy and the rule of law was as important as the law itself. The judiciary had the constitutional mandate to ensure respect for the fundamental rights of the individual, and it had worked consistently and zealously to do so. If a citizen felt that his rights had been violated, he could appeal to the Supreme Court. Initiatives taken by the authorities to maintain law and order were subject to judicial review, as were the decisions of courts martial. Furthermore, under a unique legal procedure known as "public interest litigation", it was no longer necessary for the victim of a human rights violation alone to initiate legal proceedings: any individual or group could take legal action in such cases, which were brought before the high courts and the Supreme Court.

67. A free and impartial press also strengthened the democratic system and acted as a watchdog for the protection of individual rights and freedoms. The press and public opinion in general played an important role in India in that regard, and the frank discussions on human rights that articles in the press stimulated were proof of the strength and vitality of India's institutions. The setting up of a human rights commission also testified to her Government's commitment to ensuring effective implementation of the law so as to sanction any human rights violation immediately.

68. Thus, her Government was working in every way to assume its responsibilities. However, its task, like that of other Governments around the world, was rendered difficult by acts of terrorism, which undermined the functioning of democratic institutions and assumed a particularly pernicious form when it had an international character. Unfortunately, although the Working Group on Enforced or Involuntary Disappearances had noted that a large number of the human rights violations committed in Kashmir and the Punjab had been the work of certain armed groups, the attention given to the acts perpetrated by terrorists was minimal compared to the focus on the human rights violations allegedly committed by Governments that in actual fact were struggling to protect their citizens from such groups. It was essential to bring pressure to bear upon terrorists at the international level. The special rapporteurs, working groups and members of the Commission on Human

Rights had an important responsibility in that regard. They must also appreciate the difficult circumstances under which democratic States sought to combat the scourge of terrorism. That being said, many countries like India, conscious of their obligations, always tried to avoid using excessive force and to employ exclusively legal means. To protect the human rights of its citizens, her Government had had to enact special legislation, but had included in them judicial safeguards. Under the Terrorist and Disruptive Activities (Prevention) Act, a detainee must be brought before a judge within 24 hours of his arrest, and as a safeguard against arbitrary arrests, every case of detention based upon that law must be confirmed by the court, and the other cases must be confirmed by an Advisory Board composed of three Supreme Court judges. The opinion of the Advisory Board and the magistrate was binding for the State. Furthermore, habeas corpus was an integral part of judicial procedure.

69. Contrary to what some seemed to think, no Government servant benefited from impunity. Every allegation of human rights violations made against members of the security forces was scrupulously investigated, and disciplinary measures were taken against those found guilty. To date, 230 members of the security forces had been punished by imprisonment and dismissal; others were still being prosecuted. Those measures reflected the commitment of her Government to the cause of human rights. Human rights organizations and non-governmental organizations bore a very special responsibility in that regard. Too often, they tended to focus on and condemn the actions of Governments, losing sight of the fact that it was the terrorists who were primarily responsible for acts of violence. Such organizations must address the issue in its entirety and understand that a one-sided approach could only undermine democratic Governments and societies and promote terrorism, subversion and violence by armed groups contemptuous of human rights and the rule of law. The special rapporteurs and working groups must also examine carefully all information communicated to them, not only to avoid duplication with other mechanisms of the commission but also to enable Governments to carry out in-depth investigations on the basis of well-founded allegations. In that regard, her delegation assured the Commission that the Indian Government, in its desire to cooperate with the special rapporteurs and the working groups, carefully examined all cases brought to its attention by them, because it was determined to put an end to human rights violations and to punish the perpetrators.

70. Her delegation was pleased to note the observations of the Working Group to the effect that the number of cases of disappearances in Sri Lanka had greatly diminished. The Government of Sri Lanka deserved to be commended both for its spirit of cooperation and for all the measures that it had taken to implement the Working Group's recommendations. It had established a human rights task force and it envisaged setting up a human rights commission. Her delegation hoped that those measures would contribute to furthering the ongoing political dialogue between the various groups in Sri Lankan society so that a durable peace could be achieved in that country.

71. Mrs. ZAFRA TURBAY (Colombia) noted that the Chairman/Rapporteur of the Working Group on Arbitrary Detention had been invited by the Special Rapporteur on the situation of human rights in the territory of the former Yugoslavia, Mr. Mazowiecki, to accompany him on his two missions to that

country (see E/CN.4/1993/24, para. 8). It would therefore appear that a new form of collaboration had been created between the bodies of the Commission, and her delegation wondered whether thematic rapporteurs were required to report to the Commission on activities that they had conducted within the framework of mandates conferred by the Commission upon special rapporteurs during special sessions. The Commission should study the question in order to determine what type of assistance thematic rapporteurs should provide to special rapporteurs appointed in such circumstances.

72. Her delegation had found the report of the Secretary-General on human rights and forensic science (E/CN.4/1993/20) most interesting. The holding of consultations with institutions specialized in the identification of possible victims of human rights violations would be very useful for ensuring the success of investigations conducted in that area. Such collaboration was very important, because it would enable progress to be made in the campaign against the impunity of perpetrators of human rights violations around the world. The report also stressed the need to train forensic scientists and other medico-legal experts, and it was to be hoped that other training workshops, would be organized like those that had been held in Colombia and other countries.

73. Her Government supported unreservedly all activities designed to combat impunity, because that was one of its own priority objectives. It had taken firm and resolute action in that regard. It had created new judicial institutions to rectify omissions in the administration of justice, such as the Office of the Attorney-General of the Nation, with responsibility for conducting investigations and prosecuting the perpetrators of violations in the competent courts. The Office worked to that end in close cooperation with the judicial police. To improve the administration of justice, a Senior Judicature Council had also been established, in conformity with the Constitution, to take, inter alia, disciplinary measures, where necessary against judges and lawyers, to settle conflicts of jurisdiction, to present lists of candidates for judicial posts and to prepare and implement the budget of the judiciary. That new organization would help improve the efficiency of the judicial system through a better management of available administrative and financial resources and a closer supervision of judicial personnel. In less than one year, major results had already been obtained, notably in the investigation into the assassination of Senator and presidential candidate Luis Carlos Galán and the murder of peasants in Caloto, the perpetrators being none other than drug traffickers.

74. The report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1993/25) clearly showed that the campaign against impunity had been making progress in Colombia. Eighteen of the 41 cases of disappearances reported to the Working Group during the period under consideration had been clarified, thus testifying to the interest and promptness with which Colombia responded to the requests of various human rights organizations. With regard to the disappearance of Isidro Caballero, new proceedings had also been instituted to determine the State's responsibility in the case and the amount of compensation to be granted to the victim's family.

75. To put an end to impunity, her Government was also combating the terrorism of drug traffickers and the odious practice of kidnapping, which had resulted in many victims. It has suspended the dialogue begun with guerrilla

groups because, by pursuing their terrorist activities, the latter had shown that they did not want to seek peace. Nevertheless, her Government had done everything in its power to facilitate the reintegration of former guerrilla members in civil society, in keeping with the commitment that it had made when it had signed peace agreements with the various guerrilla movements. The continuing terrorist attacks and kidnappings had prompted the Congress to adopt a law on kidnappings, and the Government had decreed a State of Internal Disturbance (Estado de Conmociòn Interior) in order to be able to take the requisite financial and humanitarian measures. It had taken steps to guarantee the safety of witnesses and informers, assure transport carriers that had been the victims of acts of terrorism and assume the losses arising from acts of terrorism in the transport sector. When it had extended the State of Internal Disturbance, the Government had also ordered clinics and hospitals to accept without preconditions all victims of terrorist attacks. The proclamation of the state of emergency and the measures taken on that occasion were necessary to prevent the enemies of democracy from destabilizing State institutions and to stop the subversive movements, aided and abetted by drug traffickers, from precipitating the country into anarchy.

76. In closing, she assured the Commission that no restriction had been imposed on the exercise of the human rights and fundamental freedoms of Colombian citizens during the state of emergency and that all constitutional guarantees had been respected in that regard. Her Government was prepared to communicate to all those who so desired information on the exercise of the powers conferred upon the authorities by virtue of the state of emergency, which had been proclaimed as a legitimate response to the threat to public order.

77. The CHAIRMAN invited the representatives of countries that so requested to speak in exercise of the right of reply.

78. Mr. MBARUSHIMANA (Observer for Rwanda) pointed out to the representatives of the World Social Prospects Association, the International League for the Rights and Liberation of Peoples and the Commission of the Churches on International Affairs of the World Council of Churches, who had expressed concern about the human rights situation in Rwanda, that that country had been at war for more than two years, during which time many civilians had been killed in fighting or in ethnic or political unrest. It was therefore obvious that the war was the main cause of the human rights violations committed in Rwanda since 1 October 1990. It was, however, wrong to maintain that the Rwandese Government had deliberately sought to exterminate the Tutsi minority.

79. On the contrary, his Government had done everything in its power to promote national reconciliation, notably by deciding in April 1991 to release all persons imprisoned in connection with the conflict, to grant pardons to persons who had been sentenced to prison and even to death and to proclaim an amnesty, by virtue of the two acts of 15 November 1991, for Rwandese refugees and the perpetrators of certain offences. His Government had also taken measures to put an end to ethnic unrest and to bring to justice all those implicated. The transitional Government set up on 16 April 1992 had started direct negotiations with the FPR-INKOTANYI, which could have resulted in a negotiated settlement of the Rwandese conflict if the FPR-INKOTANYI had not

violated the cease-fire without any justification on the night of 7 to 8 February 1993. From 7 to 21 January 1993, the Rwandese Government had received in Rwanda an international investigation commission to clarify all the human rights violations committed in the country during the war and was prepared to implement the recommendations that that commission formulated in its report. In particular, it would take measures to bring to justice all those found responsible for those violations. Perhaps the FPR should make the same commitment. In that context, Rwanda urged all members of the international community to help convince the FPR-INKOTANYI to lay down its arms and to resume political negotiations. His Government was convinced that negotiations were the sole solution to the conflict and that the end of the war should enable it to improve the human rights situation in the country, in particular by implementing the provisions of the Protocol of an agreement on the rule of law, signed on 18 August 1992 in Arusha, Tanzania, and by completing the democratization process under way.

80. Concerning the question of Rwandese journalists who, according to the representative of the International League for the Rights and Liberation of Peoples, were being persecuted, his delegation pointed out that since the adoption of the Press Act and the creation of a Ministry of Information to coordinate the activities of the public and private press, relations between the authorities and journalists had been clarified, and at the current time no Rwandese journalist was harassed for activities carried out in the exercise of his profession. Mr. André Kameya, one of the journalists cited as having been persecuted, was currently participating in the work of the Commission and could testify to that himself.

81. Mr. MURAT (Observer for Turkey), responding to the representative of a non-governmental organization who had expressed great concern about the murder of journalists in south-eastern Turkey, said that in the past seven years that region had been the setting for terrorist violence that had cost the lives not only of journalists but also of some 2,000 civilians.

82. The investigations ordered into those cases had shown that some of those journalists had been murdered for having revealed that terrorist groups and drug traffickers had been behind the acts of violence, themselves often manipulated by the international terrorist organization known by the name of PKK, which was currently trying to bring the drug trade between the Middle East and Western Europe under its control. As could be seen in the conclusions of a report of the organization "Reporters sans frontières" published on 19 February 1993, the murder of at least two of the 12 journalists concerned had in fact been ordered by the PKK and carried out by its agents. Furthermore, the police authorities had recently succeeded in arresting several members of international terrorist rings, a number of whom had admitted that they had been affiliated with the fanatical fundamentalist organization Hezbollah and had murdered at least five of the journalists in question.

83. It should be noted that in order to speed up the investigation process, the ministries concerned had increased the staff of the investigating services, and new procedural regulations were under consideration. It was clear, however, that despite the good political will and the intense efforts of the government authorities, it was often very difficult to apprehend the

real perpetrators of premeditated homicides carried out by professional criminal organizations. However, his Government was determined to dismantle the criminal rings that were behind so-called political activities.

84. In closing, his delegation underscored that notwithstanding the atrocities committed indiscriminately by terrorists against members of the press, Turkey continued to be a country in which the greatest freedom of expression reigned, a fact to which countless newspapers and weeklies and several dozen private radio and television stations testified. The Turkish Government reiterated its solemn appeal for international solidarity in combating terrorism and urged all Governments and non-governmental organizations to work to that end.

The meeting rose at 1 p.m.